



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

VIA UPS

Mr. Eric Miller
EHS Manager
AC & S, Inc.
150 Plant Road
Nitro, WV 25143

JUN 30 2016

**Re: Notice of Violation
Compliance Evaluation Inspection
September 23-25, 2014
EPA ID No. WVD981730757**

Docket Number: R3-16NOV-RCRA-022

Dear Mr. Miller:

On September 23 through September 25, 2014, the U.S. Environmental Protection Agency, Region III ("EPA") conducted a Compliance Evaluation Inspection ("CEI") under the West Virginia Hazardous Waste Management Act ("HWMA"), as amended, Chapter 22-18A, 1994, Series XV, and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. Sections 6901 et seq. of your Nitro, West Virginia facility. Based on that inspection and a review of the information sent to EPA in your June 15, 2015 and February 1, 2016 responses to EPA information request letters ("IRLs"), EPA has determined that AC & S, Inc. ("AC & S" or "the Facility") has violated regulations promulgated under HWMA and RCRA. As a result of the findings, the EPA is issuing this Notice of Violation ("NOV"). The specific violations are:

1. During the September 2014 EPA CEI, Facility personnel stated that spent aerosol cans are punctured with a hammer and nail, and the punctured cans are discarded as non-hazardous waste. In its June 15, 2015 IRL response AC & S provided copies of Material Safety Data Sheets ("MSDSs") for "Claire Mist Adhesive" and "CRC Bright Zinc-it Instant Cold Galvanize" aerosol cans as Attachment 5.c. Both MSDSs indicate to dispose of the material and its container as hazardous waste.

Aerosol cans that are punctured and that do not contain a significant amount of liquid would meet the definition of scrap metal, and thus would be exempt from RCRA regulation under 40 CFR 261.6(a)(3)(iv) if it were to be recycled. However, any liquids or contained gases that are removed from each aerosol can is subject to regulation if such waste is a listed hazardous waste or if it exhibits a characteristic of hazardous waste. The information in the MSDSs provided by AC & S in its IRL response indicate that the content of such aerosol cans exhibits a characteristic of flammability, and therefore should be managed as D001 hazardous waste. The information gathered during the EPA CEI and from follow-up information gathering indicates AC & S did not manage the content of such aerosol cans as hazardous waste. Handling of the aerosol can and its

contents in this manner constitutes a failure to maintain and operate the facility to minimize a release of hazardous waste or hazardous constituents as required by WV Code § 33-20-8 [40 CFR § 265.31].

2. During the September 2014 EPA CEI, the EPA inspector observed a satellite accumulation area ("SAA") container used to accumulate spent hazardous waste rags located in Building 10. At the time of the CEI, the container was labeled with the words "Satellite Accumulation Area." The container was not marked with words to describe its contents or with the words "Hazardous Waste."

In the Building 9 quality control laboratory the EPA inspector observed a 30-gallon SAA container used to accumulate hazardous waste. At the time of the CEI, the container was not labeled to describe the content of the container or marked with the words "Hazardous Waste." Since the containers in Building 10 and Building 9 were not marked or labeled in accordance with the SAA container conditional exclusion requirements in WV Code § 33-20-5 [40 CFR § 262.34(c)(1)(ii)], AC & S failed to label both containers with the words "Hazardous Waste" in violation of WV Code § 33-20-5 [40 CFR § 262.34(a)(3)].

3. In its June 15, 2015 IRL response to Question 8, AC & S provided the names of employees responsible for the management of hazardous waste and copies of employee hazardous waste training records. In its February 1, 2016 IRL response to Question 5, AC & S provided the dates of employment for each AC & S employee responsible for the management of hazardous waste. Based on the information provided in its IRL responses, AC & S failed to provide hazardous waste training to two employees (Jimmy J. and Jason L.) in calendar year 2012 in violation of WV Code § 33-20-8 [40 CFR § 265.16(c)].
4. In its June 15, 2015 IRL response to Question 8, AC & S did not provide documentation of hazardous waste training given to its supervisory personnel. AC & S also stated the following:

"Trainers for RCRA waste management and Emergency Coordinators are trained by reviewing their responsibilities in the Emergency Response program, participating in response exercises such as evacuations and spill cleanup, reviewing relative regulations, attending professional seminars, and remaining aware of daily facility activities. Such training activities are ongoing throughout each year and therefore do not have specific dates."

Based on the information provided in its IRL responses, AC & S failed to keep records to document that the requisite hazardous waste training was given to those supervisory personnel with hazardous waste management responsibilities in violation of WV Code § 33-20-8 [40 CFR § 265.16(d)(4)].

A copy of the September 23-25, 2014 CEI report documenting the findings of the inspector were previously enclosed as an attachment to EPA's May 15, 2015 IRL to AC & S.

Within **fifteen (15) calendar days** of the receipt of this NOV, please submit documentation of any measures that the Facility has taken or is taking to achieve compliance with the violations noted above. If the compliance measures identified are planned or are ongoing, please provide a schedule for when the compliance measures will be completed. If the

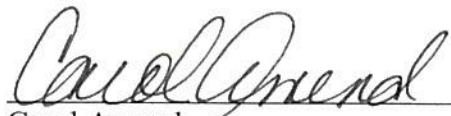
Facility can provide documentation which shows that EPA's determination of the alleged violation(s) is in error, please submit this information as well. Section 3008(a) of RCRA authorizes EPA to take an enforcement action whenever it is determined that any person has violated, or is in violation, of any requirement of RCRA as amended. Such an action could include a penalty of up to \$37,500 per day for each violation. In addition, failure to achieve and maintain compliance with the regulations cited in this NOV may be treated as a repeated offense and may constitute a "knowing" violation of Federal law.

With regard to the Small Business Regulatory Enforcement and Fairness Act (SBREFA), please see the "Information for Small Businesses" memo, enclosed Attachment A, which might be applicable to your company. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action. EPA has not made a determination as to whether or not you [or your company] are covered by the SBREFA.

This Notice of Violation is not intended to address all past violations, nor does it preclude EPA from including any ongoing, including the ones cited in this letter, or past violations in any future enforcement action. Your response to this NOV shall be addressed to:

Andrew Ma
U.S. Environmental Protection Agency - Region III
Environmental Science Center
701 Mapes Road
Fort Meade, MD 20755

If you have any questions regarding this matter, please feel free to contact Mr. Andrew Ma at (410) 305-3429.



Carol Amend
Associate Director
Land & Chemicals Division
Office of Land Enforcement

June 29, 2016
Date

Enclosure

cc: A. Ma (3LC70) w/o
P. Belgiovane (3LC70) w/o
J. Sizemore (WVDEP) w/o